84-1241

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IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1984

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ROBERT KNOBELOCH, Petitioner,

V.

UNITED STATES OF AMERICA, Respondent.

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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

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## QUESTIONS PRESENTED

I. SHOULD THE EVIDENCE SEIZED IN A WARRANTLESS SEARCH OF A HOTEL ROOM BE SUPPRESSED WHEN THE GOVERNMENT AGENTS KNEW THE LOCATION OF THE CONTRABAND BEFOREHAND AND THE GOVERNMENT AGENTS CREATED THE ALLEGED EXIGENCIES PURPORTED TO JUSTIFY THE SEARCH?

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21 U.S.C. §841 (a) (1) and §846

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Petitioner, Robert Knobeloch, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit.

The appeal to the Eighth Circuit was taken from a ruling and judgment entered on a finding of guilt on a two-count Indictment filed against Robert

Knobeloch. Judgment followed a bench trial had in the United States District Court for the Eastern District in Missouri, Eastern Division, on February 6, 1984. The defendant appealed the Magistrate's ruling and trial court's ruling denying defendant's Motion to Suppress.

The District Court ruled that there were present at the time of the arrest sufficient exigent circumstances in order to justify the warrantless search of the defendant's hotel room, and hence, the seizure of the evidence therein, and upheld the denial of the Motion to Suppress.

## OPINION BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit was filed on October 29, 1984, and is attached hereto and made a part of the appendix.

## JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on October 29, 1984. The jurisdiction of the Court is invoked under 28 U.S.C. §1254(1).

## STATEMENT OF THE CASE

The defendant, Robert Knobeloch, was co-defendant on a two-count Indictment filed against William Hahn and Robert Knobeloch. Count I alleged that Knobeloch and Hahn knowingly and willfully conspired to distribute cocaine in violation of 21 U.S.C. §841(a) (1) and §846. Count II alleged Knobeloch possessed cocaine with the intent to distribute in violation of 21 U.S.C. §841 (a) (1).

Defendant pled not guilty to both charges and filed a Motion to Suppress and other pre-trial motions on November 2, 1983. On November 10, 1983, all pre-trial matters were assigned to United States Magistrate Robert D. Kingsland. On November 15, 1983, a hearing was had in regard to defendant's Motion to Suppress before Magistrate Kingsland.

Timothy A. Brunholtz, special agent for the Department of Justice, testified he was assigned to the St. Louis District Office in March of 1982. (Mot. Tr-4) He stated on March 30, 1982, he was present at the Howard Johnson Motel in St. Louis with other agents. (Mot. Tr-5) Brunholtz stated that he, an informant and Officer Zambo were to conduct a drug transaction with a Mr. Hahn. (Mot. Tr-6) Brunholtz stated Zambo took out room 114 in order to take delivery of cocaine. (Mot. Tr-7)

After their arrival, Mr. Hahn told the agents the delivery would have to take place in two transactions instead of one. (Mot. Tr-8) Brunholtz testified Hahn came to room 114, delivered a quantity of cocaine and was arrested. (Mot. Tr-9) Hahn told the agents the name of the other party to this transaction was

Bob Knobeloch. (Mot. Tr-11) Brunholtz stated he knew Knobeloch was in the building and may have been in room 317. (Mot. Tr-12) Room 317 proved to be vacant. (Mot. Tr-13) Brunholtz and other police officers went to room 308, knocked and said they were the maid service. (Mot. Tr-14) The agents identified themselves as Federal agents and tried to open the door with a pass key. (Mot. Tr-14) The door was bolted, and they entered forcibly. (Mot. Tr-14) They found Mr. Knobeloch in the room, and then patted him down to search for weapons finding bags of cocaine and other evidence. (Mot. Tr-16) Brunholtz stated he didn't think they had time to get a warrant. (Mot. Tr-18)

On cross-examination, Brunholtz stated he was aware the drug deal would transpire in either room 308 or one of

the rooms they chose. (Mot. Tr-20) He stated he knew Hahn was going to have drugs with him in room 308. (Mot. Tr-22) Brunholtz stated Hahn was notified to come to room 114 so that the arresting officers could come in through the first floor sliding door. (Mot. Tr-33) Brunholtz stated he knew it was a good likelihood that another person other than Hahn would be involved in the transaction. (Mot. Tr-24) Brunholtz said no one would have gotten out of room 308 if an officer was posted outside. (Mot. Tr-26)

Brunholtz stated at the time of Hahn's arrest since Knobeloch couldn't have known the deal had gone bad, they, the agents, had no reason to suspect Knobeloch would destroy the evidence. (Mot. Tr-26) He stated between the time they first knocked down room 308 and

finally got in was around 45 seconds to one minute. (Mot. Tr-27) He stated they entered the room without a warrant and without consent. (Mot. Tr-28) Brunholtz stated he could have arranged to have a warrant issued the day before. (Mot. Tr-29) He didn't believe anyone was going to be injured nor was he in hot pursuit. (Mot. Tr-30) He stated the defendant had the evidence seized in his pocket and did not appear ready to dispose of any evidence. (Mot. Tr-31) Brunholtz testified he entered the room to protect the destruction of evidence. (Mot. Tr-32)

The defendant testified he is 33 years old and resides in Mascoutah, Illinois. (Mot. Tr-41) Knobeloch stated while he was in room 308, he did not know that any drug sale had gone bad. (Mot. Tr-42) He stated while

Mr. Hahn was gone, he was sitting on the bed in room 308 reading a magazine. (Mot. Tr-42) He stated he heard a voice saying maid service and he refused it. (Mot. Tr-43) He stated the men who forced the door down announced they were agents at the same time they broke the door down. (Mot. Tr-43) He stated he did not destroy nor attempt to destroy any evidence. (Mot. Tr-44)

On December 30, 1983, Magistrate Robert D. Kingsland recommended the Motion to Suppress be denied. Judge William L. Hungate adopted the Magistrate's recommendations in an Order dated January 23, 1984.

A trial was had before United States District Judge William L. Hungate. The defendant first moved to waive the jury and his motion was allowed. (Tr-3)

The Government called William Hahn.

(Tr-10) Hahn stated he had agreed to testify against the defendant Knobeloch, and the Government agreed to file no other charges against him. (Tr-11) Hahn stated that on March 20, 1982, an informant asked him about getting some cocaine. (Tr-12)

On March 30, 1982, at around 11:00 a.m., Hahn called Knobeloch, who was to supply the cocaine, to come over to the Howard Johnson's Motel in St. Louis. (Tr-19) Hahn stated Knobeloch came into room 308 and showed him the drugs. (Tr-20) Hahn stated he later got a call from the informant. (Tr-21) Hahn stated he told Knobeloch to go to room 317. (Tr-21) The informant called and said the buyer was going to take out room 114, and the exchange would take place there. (Tr-23) Hahn said the police asked him where the rest of the drugs were, and he

told them it was with Bob Knobeloch. (Tr-24)

On cross examination, Hahn testified the Government informant knew another person was to be involved in the transaction at the motel. (Tr-35) Hahn stated the informant had called him on the phone in room 308 the day before, and the informant knew Hahn was going to be in room 308. (Tr-35) Hahn stated it would be customary for a person buying cocaine to test it for purity, and that the money would have to be counted, and that all of this would take time. (Tr-36) Hahn stated after he was arrested he couldn't have warned Knobeloch. (Tr-37) He stated 25 minutes elapsed between the time he was arrested, and the time the agents went to Knobeloch's room. (Tr-38)

St. Louis Police Officer Robert Zambo testified one of his informants

advised him around March 20, 1982, that a purchase of cocaine might take place. (Tr-44) Zambo testified in conformity with Agent Brunholtz regarding the facts of the purchase and arrest of both parties. (Tr-46-52)

On cross-examination, Zambo stated he knew that Mr. Hahn was not going to supply the cocaine, and that another person was to be involved. (Tr-59) Zambo knew Hahn had rented room 308 at least one day before the exchange took place. (Tr-60) Zambo stated he knew beforehand that the source of the cocaine might be in room 308. (Tr-61)

Gus Kolilis, police officer, was assigned to Howard Johnson's on March 30, 1982. (Tr-72) He testified that on that day Mr. Hahn was taken into custody in room 114. (Tr-74) Kolilis testified in conformity with Brunholtz regarding how

room 317 was searched and how room 308 was broken into. (Tr-76)

On cross-examination, Kolilis stated on March 30, 1982, Zambo briefed him on the transaction, and that Mr. Hahn was going to be one of the participants. (Tr-86) At the time of the arrest of Hahn, Zambo told Kolilis that the other party might be in room 308 or 317. (Tr-90) Over objection, Kolilis testified that if on March 29, 1982, the officers in charge had had knowledge that the contraband would have been present in room 308, the obtaining of a search warrant would have been preferable to the manner in which they handled the arrest. (Tr-94) Kolilis stated he knew the only way Knobeloch could get out of the room was through the front door or a third story window. (Tr-98) He stated that when they broke the door down, Knobeloch

was not attempting to destroy any evidence. (Tr-99)

## REASONS FOR GRANTING THE WRIT

The Eighth Circuit Court of Appeals found the defendant lacked standing to assert any right to privacy and that the exigent circumstances justified a warrantless search of the room the defendant occupied and the seizure of the evidence there.

The Fourth Amendment disallows unreasonable searches and seizures and assures that people may be secure in their "persons, houses, papers and effects." This right to privacy may not be capriciously invaded by agents of the state nor the Federal Government. Wolf v. Colorado (1949) 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1782. The thrust of the protection is that the evidence seized by an illegal search is excludable in a federal prosecution and the fruit of the search may not be admitted against the

defendant. United States v. Davis, 423 F.2d 924 (5th Cir. 1970); Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed. 2d 441 (1963).

The extent and breadth of a person's "reasonable expectation of privacy" was delineated in Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed. 2d 576 (1967). The genesis of "reasonable expectation" has generally followed the criteria of an actual expectation by the person, one which society views as reasonable and legitimate. Katz, infra. while a person in a motel room does not have a legitimate expectation of privacy in regard to his conversations which may be overheard in adjoining rooms, United States v. Jackson, 588 F.2d 1046 (1979), he can reasonably expect protection from invasive physical trespass into the room itself. Rakos v. Illinois, 439 U.S. 128,

99 S.Ct. 421, 582 L.Ed. 2d 387 (1978); United States v. Blake (1980) 632 F.2d 731. The Court below apparently held that since the defendant, Robert Knobeloch, did not rent the rooms in question, but merely occupied them, he, therefore, had no standing to assert any right to privacy argument. Knobeloch had permission to be in the rooms in question and had a key given to him by the co-defendant who had rented both rooms. As a hotel or motel room can be the object of protection as well as a home, the defendant was entitled to the same expectation of privacy as a home occupier. Hoffa v. United States, 385 U.S. 293, 87 S.Ct. 408, 17 L.Ed. 2d 374 (1966). As the court said in Katz, infra., and reiterated in United States v. Jackson at 1502, the right to privacy protects people, not places.

Based upon all the reasoning above, the defendant, Robert Knobeloch had a right to privacy expectation, and he had standing to assert it as a lawful occupier of the motel room. Rakos v. Illinois, infra.

Since the defendant had a valid right to privacy, the next question was whether or not the warrantless search executed and its fruits should be suppressed. A warrantless search is presumed to be unlawful and can survive only by being brought within one of the exceptions to the rule that a search may only be carried out pursuant to a search warrant. Storer v. California, 376 U.S. 483 (1964); Rios v. Anderson, 533 F.2d 1210 (D.C. Cir. 1976)

The burden of proof as to any exception to justify a warrantless search is upon the Government. United States v.

Munie, 534 F.2d 695 (6th Cir. 1976) The common reasons for a warrantless entry and search onto the premises protected by the Fourth Amendment are to prevent injury and to halt a crime in progress. United States v. Brand, 566 F.2d 1312 (5th Cir. 1976)

The Government will cite United States v. Hackett, 638 F.2d 1179, (9th Cir. 1980) for the proposition that exigent circumstances existed before breaking into the defendant's room. The tests under United States v. Rubin, 472 F.2d 262 (3rd Cir. 1973) will also be cited supporting the Government's case.

Under Rubin and its progeny, the first consideration in a warrantless search is the urgency of the situation and the amount of time necessary to obtain a warrant. The agents and policemen involved in this transaction were

experienced and had participated in many other investigations. The magistrate in his recommendation stated the agents had no way of knowing where the transaction was to take place. This was not true. Officer Brunholtz stated he knew co-defendant Hahn was using room 308, and he knew Hahn was going to have drugs in room 308. (Mot. Tr-21-22) The agents knew it was going to be either in room 308 or as it turned out a room which they chose in order to facilitate the arrest, that is room 114. (Mot. Tr-23) The magistrate also stated the officers had no way of knowing a third man, Mr. Knobeloch, was to be involved. That finding was in error. Brunholtz testified he knew another person was likely to be involved. (Mot. Tr-24) Officer Zambo, who was in charge of the investigation, knew another man was to be involved with the delivery.

(Tr-59) Zambo knew Hahn had let room 308 the day before the arrest and knew the source of the cocaine might be in room 308. Officer Kolilis stated on the day of the arrest Zambo told him of another party to the sale who might be in room 308 or 317. (Tr-90)

In regard to the time necessary to obtain a warrant and the urgency involved, every witness for the Government stated room 308 was the center for Mr. Hahn and the cocaine. The police knew at least 24 hours ahead of time of the existence of another party, and that the co-defendant Hahn was going to have drugs in room 308. The urgency in regard to the needing of the warrant after the arrest of Mr. Hahn was created by the Government's own nonfeasance in procuring a warrant. Based upon probable cause, a warrant could have been readily issued

the day before or the morning of the transaction. Brunholtz testified a warrant should have been obtained. (Mot. Tr-29) Kolilis stated that a search warrant would have been preferable to knocking the door down. (Tr-94) The Government's failure to procure a readily obtainable warrant should not be allowed to trammel the right of privacy expectation of the defendant.

The second circumstance to examine in a warrantless search is the officers reasonable belief evidence is about to be destroyed. None of the Government witnesses testified they believed evidence was about to be destroyed when they broke down the door into room 308. Brunholtz testified Knobeloch could not have known that Hahn had been arrested. (Mot. Tr-27) The officers who arrested Knobeloch both stated Knobeloch was not attempting

to dispose of any evidence although it could have been done relatively easily. As the defendant was on a third floor room with only one way out, the evidence could not have reasonably been feared to be removed from the room.

The Rubin test of danger to the police guarding the site is clearly in the defendant's favor, as no evidence was put on by the Government regarding this aspect and this test of exigency clearly fails.

There was no evidence in the case that Knobeloch knew the police were on "his trail" as per Rubin. Hahn testified he was supposed to return to room 308 to pick up the second part of the delivery. There was no undue delay up to the arrest of Knobeloch, as Hahn was arrested almost immediately upon making the delivery. All witnesses testified a normal trans-

action takes several minutes to test the drugs and count the money. Until the agents knocked on the door, Knobeloch stated he had been sitting on the bed reading a magazine. (Mot. Tr-42) The exigency which is supposed to allow a warrantless search should not be one created by the police. The defendant had no other way out of the motel room except through the door which the officers broke down. The officers could have been posted, and the defendant would have been apprehended.

The fifth test under Rubin regarding the ready destructibility of the evidence favors the Court's ruling, however, in light of other criteria, the argument in favor of not finding an exigency overwhelms the destructibility argument.

In summary, there was not an exigency of circumstances which would

validate a warrantless search. The officers knew of an additional party to the transaction other than Hahn. They were aware the day before that another party would be supplying the drugs to Hahn. They were aware Hahn had let room 308. By their own choice, they changed the probable site of the delivery in order to facilitate the arrest thereby insuring the other party would end up in room 308 with contraband they knew would be there. There was no evidence of reasonable belief that any drugs were about to be destroyed. There was no testimony that Knobeloch knew something was awry in regard to the transaction or that the police were on his trail.

The defendant had the right to assert an expectation of privacy. The Government had at least one day in which to obtain a warrant for the room which

they knew was going to be involved in the transaction. The exigency of circumstances, even if found to exist which petitioner asserts does not, should be found to be one of the Government's creation and not one that they can rely on. The evidence seized should have been suppressed, as the search of the room and entry into room 308 were illegal. United States v. Mann (D.C. Texas 1978) 462 F.Supp. 933; United States v. Bulman (11th Cir. 1982) 667 F.2d 1374.

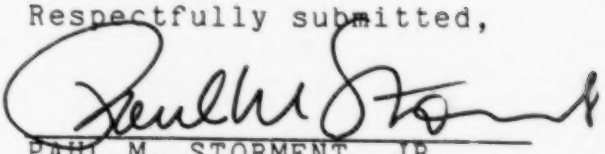
## CONCLUSION

This Court should grant this Petition for Certiorari because the Court has held that an individual has no right of expectation of privacy in a hotel room in contravention of the 11th Circuit case, United States v. Bulman (1982) 667 F.2d 1374. This Court should delineate the standard of expectation of privacy in a hotel room. Further, an exigency of the warrantless search created by Federal drug agents and adequate time and reason should be used as a sword in order to obviate the necessity of a valid search warrant under the rubric of exigent circumstances as the 9th Circuit has decided in United States v. Blake (1980) 632 F.2d 731.

For all the reasons cited above, petitioner respectfully prays that this Court enter an Order allowing

petitioner's Writ of Certiorari.

Respectfully submitted,



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APPENDIX A

UNITED STATES OF AMERICA,
Plaintiff/Appellee,

v.

ROBERT KNOBELOCH,
Defendant/Appellant.

No. 84-1417-EM

United States Court of Appeals,
Eighth Circuit

Before BRIGHT, JOHN R. GIBSON and FAGG, Circuit Judges.

JOHN R. GIBSON, Circuit Judge

1. Opinion of the United States Court of Appeals for the Eighth Circuit filed on October 29, 1984.

Robert Knobeloch was convicted in a bench trial of knowingly and willfully possessing and conspiring to possess, with intent to distribute, cocaine, in violation of 21 U.S.C. §§ 341 (a) (1) and 846 (1982). The sole issue raised on appeal is whether the district court[1] erred in denying Knobeloch's motion to suppress a quantity of cocaine seized from him in a motel room. We affirm the ruling of the district court and the convictions.

Two undercover agents had planned a drug transaction with William Hahn, who was then renting room 308 in a Howard Johnson's Motor Lodge. On the morning set for the exchange, however, Hahn announced that the delivery would

[1] The Honorable William L. Hungate, United States District Judge for the Eastern District of Missouri.

take place in two installments instead of one. Within thirty minutes, he went to room 114 of the same motel to meet the agents; he was arrested there while counting the money after turning over the first half of the cocaine. Hahn identified Knobeloch as his source to whom he was to take the money before receiving the remainder of the cocaine, but he declined to lead the officers to Knobeloch or to call Knobeloch to assure him the transaction was progressing satisfactorily. Police officers, based on earlier conversation as to where the transaction might take place, went first to room 317. It was vacant so they went to room 308, knocked and said they were with the maid service. The officers unsuccessfully attempted to use a passkey and, upon hearing noises within, forced the door open, arrested Knobeloch and seized

cocaine from his person.

The district judge, following the recommendation of a magistrate to whom certain pretrial motions had been referred, denied Knobeloch's motion to suppress the cocaine, finding that exigent circumstances justified the officers' warrantless entry into the motel room.[2] This determination is subject to the clearly erroneous standard of review. United States v. Wentz, 686 F.2d 653, 657 (8th Cir. 1982); United States v. Jones, 635 F.2d 1357, 1360 (8th Cir. 1980).

The evidence demonstrates that Hahn, upon his arrest, told the agents that Knobeloch expected him back immediately with the money. Since Hahn refused to

[2]The district court also held that Knobeloch lacked standing to challenge the constitutionality of the search, but the government does not defend on that ground on appeal.

call Knobeloch to reassure him, the agents believed that Knobeloch would suspect that the deal had gone sour before they would have time to obtain a search warrant. When they found no one in room 317 and heard a scurrying in room 308 after identifying themselves as federal agents, they feared that the cocaine would be destroyed. Upon entering they found Knobeloch standing near the bathroom door, and the cocaine was on his person.

In United States v. Palumbo, 735 F.2d 1095 (8th Cir. 1984), we were presented with similar circumstances in which officers feared that one drug dealer's failure to return promptly (because of arrest) would alert the partner that something was amiss. We there stated: "We believe that the officers' fear that Palumbo would become

suspicious and destroy the cocaine was reasonable, and created an exigency sufficient to justify the warrantless entry and arrest." Id. at 1097. Under the facts here, a fear of destruction of the evidence was equally reasonable and sufficient to constitute exigent circumstances justifying the officers' actions.

Knobeloch argues vigorously that the urgency here was created by the police since the agents knew that another person was likely to be involved in the drug transaction and knew that activities would center around room 308, where Knobeloch was arrested, because Hahn had rented it the day before the transaction. Knobeloch also asserts that no government witness testified to a belief that evidence was about to be destroyed and that the arresting officers in fact testified that Knobeloch was not

attempting to dispose of evidence when they seized him. He argues that the time lapse between the arrest of Hahn and the arrival of the officers at room 308 was insufficient to have given him warning that something had gone wrong and that since there was only one way out of the room, officers could have been posted.

There is evidence, however, that the agents believed they could not make a sufficient showing of probable cause prior to the first delivery of drugs by Hahn. Until they knew at least that the transaction would be conducted in two parts, they had no reason to suspect that Hahn's drug source would be present in the Howard Johnson's at that time, even though they could suspect his general existence.

We cannot conclude that the district

court was clearly erroneous in its finding of exigent circumstances. The possibility that Knobeloch would take warning from the delay in Hahn's return and the scurrying heard by the officers while outside room 308 justified a fear that evidence would be destroyed. Palumbo requires that we uphold the district court in denying the motion to suppress.

The conviction of Knobeloch on both counts is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.